

RECORD OF ORAL RESPONSE

BILLS AND LEGISLATIVE REFERRALS

Date: May 24, 1983 Person: Jim Murr
Office: OMB
Subject: Justice Views Letter on S. 828

Bill No.: _____

Comment: I called Murr to state that the Agency had no objection
to the Justice views letter on the Bill. The letter opposes the Bill
on a number of grounds, ^{citing} ~~stating~~ problems
which I had noted in my earlier
review of the Bill. The Agency/would not be affected by the Bill
and hence has no objection to the Bill. ~~stating~~ We had no objection
to the views letter, however, either.

File: Legis. Gen.

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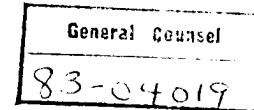
Name

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 16, 1983



LEGISLATIVE REFERRAL MEMORANDUM

Legislative Liaison Officer

TO:

Department of State
Department of Defense
✓ Central Intelligence Agency

SUBJECT: Department of Justice report on S. 828, a bill to require all nationals of Communist countries to register with the Attorney General before engaging in certain activities involving members of Congress.... The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than cob May 27, 1983.

Direct your questions to me at (395-4870).


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: Mike Uhlmann A. Curtis B. Sasser M. Horowitz



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

You have requested the comments of the Department of Justice on S.828, "A Bill to require all nationals of Communist countries to register with the Attorney General before engaging in certain activities involving members of Congress and congressional employees, in order to protect the internal security of the United States and impede espionage."

The Bill would prohibit any national of a Communist country from attending any session of the Congress, or any committee, subcommittee or conference committee hearing, or from making any other contact with a member of Congress or employee of such member unless the national first files with the Attorney General under oath a statement of purpose (elsewhere called a registration statement). Persons who violate the Act are to be ordered deported by the Attorney General, without benefit of any administrative hearing. The deportation orders are not subject to judicial review, and persons deported are to be permanently excluded from the country. However, the Attorney General is granted the power to waive the application of the Act to any person if he determines such application to be not in the best interests of the United States.

This Department cannot support passage of the Bill in its present form. While we appreciate congressional concerns regarding handling of sensitive information, and would consider supporting appropriate corrective legislation, this Bill is not so limited. Therefore, we must oppose this Bill as drafted for the reasons set forth below.

S.828 is vague and overbroad with respect to persons, places and communications covered. As a result, there is little or no connection between its stated purpose and the disclosures which would result. Because of its overbreadth, the Department does not think it is saved by the extraordinary delegation of discretion to the Attorney General to substitute his judgment for that of the Congress regarding application of the Bill, an approach we believe undesirable. Finally, the Bill fails to take into account the inherent authority of Congress to take administrative steps short of legislation, including promotion of awareness among Members and staff of the methods and objectives of intelligence operatives, to counter abuses in this area.

S.828 is vague and overbroad both with respect to persons and communications covered. For example, since the Bill focuses on national origin, and the term "national" of a Communist country is not defined, the Bill would apply to both communists and anti-communists such as Alexander Solzhenitsyn, as well as to political refugees and tourists, even children. The Bill would also apply to diplomats, foreign government officials, and print and broadcast media representatives. The Department is concerned that imposition of these restrictions would lead to restrictions on our own diplomats and journalists, and may contravene multilateral treaty obligations of the United States, and customary international law.

S.828 is also vague and overbroad with respect to places and communications covered. Since the Bill is not limited to the Congress, it covers conversations occurring anywhere, including private homes, embassies, and even overseas. S. 828 does not discriminate between public information like press releases or public reports and properly classified data, nor does it make any distinctions based on the person initiating the contact. S.828 would therefore effectively preclude covered nationals from attending public sessions or committee hearings, even though the same sessions or hearings may be televised live. It would also subject to deportation any covered nationals who accepted telephone calls from members or staff aides.

S.828 would subject to permanent and unreviewable deportation orders a new class of people, who, uniquely, would be deprived of any administrative hearing. The constitutionality of such a provision is open to serious questions. See The Japanese Immigrant Case, 189 U.S. 86 (1902), and Sung v. McGrath, 339 U.S. 33 (1950). The Department cannot support the summary, mandatory, nature of

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this provision, its permanency, or its unreviewable nature. Nor can the Department support a provision which strips the Attorney General of discretion to dispose of these "espionage" matters in any manner other than by deportation.

The vast overbreadth of the Bill as written imposes severe administrative burdens on the Department. For example, the Bill appears to require a separate registration for each communication or attendance. This would make compliance, and thus enforcement and administration, virtually impossible. However, even if this problem were addressed, the remaining overbreadth of the Bill would result in an administrative quagmire producing little or no valuable information. Indeed the difficulty, if not the futility, of the underlying approach was evidenced by the recent revision of the alien registration system to abandon a far less ambitious attempt to monitor the whereabouts of aliens than S.828 (see 8 U.S.C. 1301, et seq.).

Accordingly, in view of the substantial difficulties inherent in the Bill's approach, it is suggested that the Committee might desire to consider a more narrowly focused mechanism utilizing the ample authority of the Congress to regulate its internal affairs.

The Office of Management and Budget advises that the Administration has no objection to the submission of the above comments from the standpoint of its legislative program.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs